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EDITORIALS

The Illegitimate Child: From *Filius Nullius* to Equal Protection

IT has often been said that there are no illegitimate children: there are only illegitimate parents. This characterization has not received legal backing, however. Under American common law, which is derived from English precedent going back to the Ecclesiastical Courts of the Middle Ages, any child not born to legally married parents carries the Latin stigma, *filius nullius*, child of no one. In old Roman Law distinctions were made between the offspring of concubines, prostitutes, adulterers, and incestuous unions. However, these distinctions did not seem to interfere with the exercise of many of the rights we would call civil rights today. Many famous Roman politicians and generals were illegitimate. In the golden years of Athens, however, all illegitimates were treated as aliens in every way, deprived not only of inheritance from their parents, but also barred from exercising any public privileges.

Most of the reforms in American law regarding the illegitimate have been accomplished by statute in the various states and have concerned three areas: (1) rights against the mother; (2) support rights against the father; and (3) expanded inheritance rights against the father.[1] All 50 states now have some statutory method for legitimation of children born out of wedlock, either through the subsequent marriage of the parents, or through a formal acceptance of the child by the father. All states but Texas and Idaho now provide for action against the father to require him to help in the support of the child. Two courts have, however, denied the illegitimate a cause of action in tort (a law suit for damages) for allowing him to be born illegitimate.[2] These cases have been called actions for "wrongful life."[3] One of the courts, however, that in Illinois, held that it thought the claim against the parents was justified, but that relief should be obtained from the legislature passing a general law rather than from the courts in an individual case.

Arguments have been offered that the illegitimate is denied "equal protection of the law" under the United States Constitution in comparison to legitimate children. On this premise, the civil rights advocates persuasively assert, the

illegitimate would be entitled fully to all rights of support and inheritance, and perhaps even the name of his natural father.

In a rather curious case, a lower court in Texas refused to enforce a support order issued by a court in another state against the father then living in Texas, holding that to do so would deny equal protection of the law to the *father*, since Texas does not have a law for Texas residents requiring them to support illegitimate offspring. The highest court in Texas wisely reversed this decision and enforced the out-of-state support order.[4]

Recently, there has been agitation in the health and welfare fields as well as among lawyers to break away at least from the use of the term "illegitimate child." This term gives the unmistakable impression that it is the *child* who is wrong; that it is the child who is outside the law and our society. With the many reforms already enacted in our law, as pointed out above, to give the child rights against both mother and father, this connotation just is not correct. As the child gains more and more rights under the law, the term "illegitimate" will become less and less descriptive and more and more unfair and discriminatory. Is it necessary to give the child born out of wedlock another title in order to get rid of the term "illegitimate"? Some commentators seem to think so, advocating as they do such denominations as "out-of-wedlock birth" and "nonmarital child."[5] The trouble with all nomenclature changes to avoid stigmatized terms is that the new terms soon take on all of the bad attributes of the old, unless fundamental reforms in the underlying conditions take place. In any case, it seems high time that more attention be given in the health field to dealing with the rights and welfare of these marked children of our times.

(The Journal is indebted to William J. Curran, LL.M., S.M.Hyg., visiting professor of health law, Harvard School of Public Health and Harvard Medical School (55 Shattuck Street), Boston, Mass. 02115, for the above editorial.)

REFERENCES

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Sixty Years of Meat Inspection

WHEN President Lyndon B. Johnson signed the Wholesale Meat Act on December 15, 1967, meat-inspection standards for processors and distributors covered only by state law became more stringent. The new statute requires states to raise their standards to at least the federal levels already applied to meat sent across state lines. This consumer-protection legislation recalled the initial U. S. federal meat inspection law, approved March 18, 1907, and amended various times since, which provides for government supervision of the meat or products of livestock in interstate and foreign shipment. This law, designed to prevent abuses in meat packing and shipping, is administered by the Bureau of Animal Industry, U. S. Department of Agriculture. Despite broad advances in environmental sanitation, the basic problem of consumer protection remains now as in the early years of this century.

Appropriately present at the White House signing ceremony was Mr. Upton B. Sinclair, 89-year-old author, politician, and government employee, whose bold efforts many years ago led to the enactment of the first meat inspection law. His book, "The Jungle," published in 1906, presented a realistic account of unsanitary conditions in the meat in-